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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/533,673

05/03/2005

John Nike

N57.12-0001

9571

27367 7590 04/04/2007  
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/533,673	Applicant(s) NIKE, JOHN	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-26 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 03 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/05; 01/07</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 2 is indefinite because the scope of how the base layer is “adapted to” provide drainage is unclear.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4-7, 11, 13-16, 20, 22, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,822,658 issued to Pacione.

Applicant claims an artificial ski slope comprising a looped filament carpet and a resilient base layer, said carpet being releasably attached to said base layer. Applicant also claims a looped filament carpet for use in an artificial ski slope surface, said carpet comprising a backing sheet, filaments woven through said backing sheet to provide a continuous pile surface, and

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releasable attachment means secured to the lower surface of the backing sheet. Additionally, applicant claims a method of constructing an artificial ski slope comprising the steps of (a) attaching a shock absorbent base layer to an underlying surface and (b) releasably attaching a looped filament carpet to said base layer.

Pacione discloses a carpet having a continuous looped pile surface 14 sewn (tufted) into a primary backing layer 12 (col. 6, lines 6-9 and Figures 1 and 3). The pile surface may be multi-level looped (col. 6, lines 9-13) and may be made of filaments such as nylon (col. 6, lines 13-16). An adhesive backcoat 20 or foam layer 40 bonds the tufted primary backing to a secondary backing 16 (col. 6, lines 23-28 and Figures 1 and 3). Said secondary backing has a lower surface comprised of loops for resiliency and for releasably engaging with a hooked base material adhered to an underlying floor surface (abstract, col. 6, lines 17-23 and 31-42, and Figure 2).

While Pacione fails to teach the carpet material employed as an artificial ski slope, it is argued that the present claim recitations to a ski slope are not given patentable weight at this time. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The Pacione carpet meets applicant's structural and chemical limitations and is capable of performing as a ski slope. Hence, claims 1, 4, 5, 7, 11, 13, 14, 16, 20, 22, and 23 are anticipated by the cited Pacione reference.

Regarding claims 6 and 15, Pacione teaches primary backings may be a woven fabric of jute or polypropylene or a nonwoven fabric typically made of polypropylene (col. 1, lines 14-18). Since jute is inherently water absorbent the woven primary backing of Pacione anticipates

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claims 6 and 15. Additionally, even though the nonwoven primary backing is typically made of an inherently hydrophobic fiber, the structure of the nonwoven fabric inherently provides at least some absorbency. Therefore, claims 6 and 15 are also anticipated by the nonwoven primary backing of Pacione.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10, 12, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione reference.

Regarding claims 10 and 19, Pacione fails to explicitly teach a “random directional weave pattern.” However, it would have been obvious to one of ordinary skill in the art employ a random or unidirectional pile in order to provide a desired aesthetic function. Thus, claims 10 and 19 are also rejected.

With respect to claims 12 and 21, it would have been obvious to one of ordinary skill in the art to employ a pile height difference as presently claimed, absent a showing of unexpected results or criticality for the claim height differential. Note Pacione explicitly teaches the desirability of multi-level loop pile (col. 6, line 11). Additionally, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable

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ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, claims 12 and 21 are also rejected over the Pacione reference.

8. Claims 8, 9, 17, 18, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione '658 reference in view of US 6,298,624 issued to Pacione.

While Pacione '658 fails to teach the presently claimed tessellating sections or attachment strips, both are known in the art. For example, Pacione '624 discloses pile floor coverings comprising said tessellating sections and attachment strips (see abstract, Figures 13 and 18-21). Therefore, it would have been obvious to one of ordinary skill in the art to employ said tessellating sections and attachment strips in order to facilitate installation and/or enhance installation options. Therefore, claims 8, 9, 17, 18, and 24-26 are rejected as being obvious over the cited prior art.

#### ***Claim Rejections - 35 USC § 103***

9. Claims 1-10, 13-19, and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson.

In the event the ski slope recitations are given weight, the claims are held obvious over Kuriyama in view of Larson. Specifically, Kuriyama discloses an artificial lawn suitable for use as a ski slope (translation, sections [0001], [0002], and [0006]). The slope comprises a construction base (e.g., concrete), a hook fastener substrate adhered to said base, and a carpet having a backing of a loop fastener for engagement with said hook fastener (abstract and Figure 1). Figure 2 shows a carpet having tessellating sections (section [0007]), while Figure 3 shows attachment of the hook fastener substrate to the base by an anchor pin (section [0008]).

While the pile surface of Kuriyama is shown as cut pile, it would have been readily obvious to one of ordinary skill in the art to substitute loop pile. For example, Larson teaches a loop pile carpet may be preferable to cut pile in artificial ski slopes (col. 4, lines 5-21). Hence, it would have been obvious to one of ordinary skill in the art to employ loop pile to provide improved mechanical lock with a bed of ice and/or for improved resiliency of pile. Therefore, claims 1, 3, 7-9, 13, 16-18, and 22-26 are rejected over the cited prior art.

Regarding claim 2, it is asserted that the hook fastener is inherently “adapted to provide drainage of excess fluid” since it is installed on a slope. Thus, claim 2 is also rejected.

With respect to claim 4, Larson teaches the pile carpet comprises a fabric base with pile fibers projecting upwardly from said base (col. 3, lines 60-63). Regarding claims 5 and 14, Larson teaches the pile may be made of nylon (col. 3, lines 64-67). Since Kuriyama is silent with respect to these features, one must look to the prior art such as Larson for guidance. Thus, it would have been readily obvious to employ the pile structure and chemistry of the Larson patent in the Kuriyama invention since said pile structure and chemistry are known to be suitable for the intended use. Therefore, claims 4, 5, and 14 are also rejected.

Regarding claims 10 and 19, the cited prior art fails to explicitly teach a “random directional weave pattern.” However, it would have been obvious to one of ordinary skill in the art employ a random or unidirectional pile in order to provide a desired aesthetic function. Thus, claims 10 and 19 are also rejected.

10. Claims 11, 12, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson as applied to claims 1 and 13 above and in further view of US 4,822,658 issued to Pacione.

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Kuriyama and Larson fail to teach the use of at least two different pile heights. However, it would have been readily obvious to employ the claimed height differential since multi-level loop pile structures are well known in the art as evidenced by Pacione. Hence, one would be motivated to employ a multi-level loop pile to obtain a desirable aesthetic appearance and/or a desirable pile structure (e.g., resiliency). Therefore, claims 11, 12, 20, and 21 are also rejected.

### *Conclusion*

11. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHERYL JUSKA  
PRIMARY EXAMINER

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March 31, 2007